

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-212237

DATE: October 24, 1983

MATTER OF: Williams and Lane, Incorporated

DIGEST:

Although condition in low bid which stipulated that price adjustment would be made in the event that services of certain personnel were required constituted a price qualification in the nature of an escalation clause, low bid may be considered in the absence of an administrative determination that there was a real and not merely theoretical possibility that low bidder's final price to the government will exceed the price of the next acceptable bid.

Williams and Lane, Incorporated (Williams and Lane), protests the proposed award of a contract to Alco Power Incorporated (Alco), under invitation for bids (IFB) No. N6247081-B-8610, issued by the Naval Facilities Engineering Command (Navy), for six diesel-driven generating units for the Puget Sound Naval Shipyard in Bremerton, Washington.

We deny the protest.

The solicitation provided for the quotation of a lump-sum price for one generating system, including field service costs based upon 600 8-hour man-days and 20 round trips to the construction site for installing and operating the system. The pricing schedule also required bidders to provide a breakdown of their lump-sum price showing labor and transportation rates for field service employees so that the contract price could be adjusted in the event that the actual work performed exceeded or was less than the estimated 600-man-day requirement or 20 round trips. Award was to be made on the basis of the lump-sum price.

Five bids were received in response to the solicitation. The protester was the second low bidder, quoting a lump-sum price of \$4,843,769, and Alco was the low bidder with a price of \$4,721,999. Alco listed field service prices as follows:

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"Man day rate: \$360
(Based on 8 hour day) (rate per day per man)

Transportation: \$3,800*
(Round trip fare (per round trip)
including car rentals,
rooms, meals, travel
time, etc.)

*Alco Power Incorporated has a Seattle-based serviceman. The fee for his services is incorporated in the foregoing price structure. If for any reason an Auburn-based electrical or mechanical engineer is required, this additional amount will be applicable and includes a period of thirty days per trip from Auburn, New York. This is not an expected requirement."

Williams and Lane argues that Alco qualified its bid by stating, as cited above, "If for any reason an Auburn-based electrical or mechanical engineer is required, this additional amount will be applicable." Specifically, Williams and Lane asserts that the inclusion of this language in Alco's bid allows Alco to charge the government, in addition to its lump-sum price of \$4,721,999, \$360 per day for each 30-day period that an Auburn-based engineer is required at the jobsite as well as \$3,800 in transportation costs for that engineer. In other words, Williams and Lane maintains that Alco's lump-sum price of \$4,721,999 includes field service costs for Seattle-based engineers only and if for any reason an Auburn-based engineer is required, Alco's bid price will escalate. Thus, Williams and Lane contends that it is impossible to determine whether Alco is, in fact, the low bidder.

The Navy maintains that Alco's lump-sum price includes labor costs for either Seattle or Auburn-based engineers. The Navy explains that the placement of the asterisk directly by the transportation item amount merely indicates that an additional \$3,800 in transportation costs will be payable if an Auburn-based engineer is required. Thus, the Navy maintains that it is unlikely that Alco's price will exceed the price of the next low bid.

We agree with the Navy that the asterisk directly following the transportation item refers to that item only.

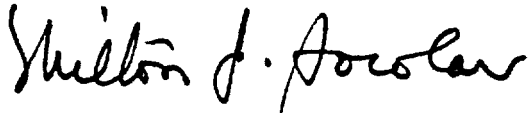
There is no reason to infer that an asterisk which is placed directly against one specific item amount applies to any other item. Therefore, we believe that the Navy reasonably concluded that, under the terms of Alco's bid, the government is obligated only to pay an additional amount of \$3,800 per round trip for the transportation of Auburn-based engineers.

Nevertheless, we find that the insertion of language in Alco's bid requiring the government to make additional payments for transportation, "if for any reason" Auburn-based engineers are required, constitutes a price qualification in the nature of an escalation clause. This in itself would not be sufficient to prevent consideration of the bid if it were possible to determine the maximum amount of additional transportation costs to the government under the provisions of the escalation clause. In that event, the bid would be for evaluation on the basis of the maximum escalated cost to the government. 36 Comp. Gen. 259 (1956). However, we also have held that a bid containing an escalation provision, under which no maximum ceiling could be determined, may properly be considered and evaluated where the likelihood that the ultimate cost to the government under that bid would exceed the amount of the next acceptable bid was so remote as to be negligible. 36 Comp. Gen., supra; B-135393, March 28, 1958. A bid should not be rejected under these circumstances except upon an administrative determination that there is a real and not merely a theoretical possibility that the low bidder's final price to the government will exceed the price of the next acceptable bid. 36 Comp. Gen., supra, at pp. 261-262; B-135393, supra; Homemaker Health Aid Service, B-188914, September 27, 1977, 77-2 CPD 230.

Under the terms of Alco's bid, the government is obligated to pay an additional \$3,800 in transportation and per diem costs for each 30-day period an Auburn-based mechanical or electrical engineer is required at the construction site. While the total number of man-days for this project is subject to adjustment, bidders were instructed to base their price upon 600 man-days at the construction site. Assuming that an Auburn-based engineer made 20 round trips to the construction site or, in other words, was present at the site for the entire estimated 600 man-days, Alco's bid still would be over \$45,000 lower than the next low bid. Thus, based upon this information, we agree with the Navy that the possibility that Alco's bid price would exceed the

price of the next low bid is extremely remote. Accordingly, Alco's bid should not be rejected on this basis.

The protest is denied.

for 
Comptroller General
of the United States